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EXPORT ADMINISTRATION ACT AMENDMENTS OF 1990

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2927

together with

ADDITIONAL VIEWS

JULY 27 (legislative day, JULY 10), 1990.—Ordered to be printed

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Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

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[To accompany S. 2927]

INTRODUCTION

On July 17, 1990, the Senate Banking Committee marked up and ordered to be reported a bill, the Export Administration Act Amendments of 1990, to amend the Export Administration Act of 1979, to enhance the export promotion and export finance activities of the United States Government, and to impose export sanctions on Iraq.

OVERVIEW

The Senate Banking Committee last reauthorized the Export Administration Act (EAA) in 1988 as part of the Omnibus Trade and Competitiveness Act. That Act provided a two year authorization for the EAA as well as for the export promotion programs of the Commerce Department. The Committee thus has the responsibility this year to reauthorize both programs.

The Subcommittee on International Finance and Monetary Policy of the Senate Banking Committee, chaired by Senator Sarbanes, held hearings on March 7 and March 28 of this year to review the views of the Administration, the private sector, and outside experts on the reauthorization of the Export Administration Act. A Staff Discussion Draft of a Committee Print was circulated to the members of the Committee on June 26. The Committee Print

was circulated to members of the Committee on July 11. The Committee marked up a bill in three titles on July 17. Title I of the bill makes amendments to and reauthorizes the Export Administration Act. Title II reauthorizes and enhances the export promotion programs of the Commerce Department and amends certain provisions of the Export-Import Bank Act. Title III imposes economic santions on Iraq.

During the Committee's July 17 markup nine of the amendments presented to the Committee Print were accepted. The only amendment voted on was one proposed by Senators Dodd and Bond regarding financing exports of defense articles and services by the Export-Import Bank, included in the bill as Section 206. The amendment was adopted by a vote of 16–5 after rejection of a proposed modification by Senator Heinz. The Heinz modification, which was intended to preserve the primary focus of the Bank's programs on commercial sales, was rejected on a 9–8 vote with Senator D'Amato later indicating that, had he been present, he would have supported the amendment.

Title I—Export Administration Act Amendments

OVERVIEW

The Export Administration Act (EAA) provides the executive branch broad authority to control exports for purposes of national security, foreign policy, and domestic short supply.

One of the principal purposes of the law is to fulfill U.S. obligations to restrict the flow of sensitive technology to the East Bloc, pursued multilaterally through the Coordinating Committee on Multilateral Export Controls, known as CoCom. This group, made up of the NATO countries (except Iceland), Japan, and Australia, was formed in 1949 to coordinate allied export control policies. The precursor to the EAA, the Export Control Act, dates to that year.

The Export Control Act was renewed several times by the Congress after its original passage, and was renamed the Export Administration Act in 1969. A major revision of the EAA was undertaken by the Banking Committee just two years ago in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418). The 1988 trade bill extended the President's authority to control exports under the EAA until September 30, 1990. The Congress therefore has the responsibility this year to review how the President has exercised his authority to control exports pursuant to the Export Administration Act and to review and amend that authority as appropriate.

The Senate Banking Committee's consideration of this reauthorization has taken place in the context of the extraordinary changes in East-West relations over the past year. The collapse of Communist regimes in Eastern Europe as well as the dramatic changes that have taken place in the Soviet Union have required a rethinking of a range of Western policies toward the East Bloc, including export controls.

The underlying assumption of both the international export control regime under CoCom and the U.S. domestic export control regime under the EAA was that the East Bloc posed a military threat to the security of the West and that an extensive set of con-

trols was needed to limit the sale of high technology goods with possible military applications to the East Bloc countries. The developments in Eastern Europe over the past year made it clear to the member governments of CoCom that the military threat posed by the governments of Eastern Europe had changed, and that the export control regime imposed by the West toward Eastern Europe required change as well.

A special meeting of the Executive Committee of CoCom took place in February of this year at which agreement was reached to undertake a major review and revision of CoCom's export control regime. That review culminated in the High Level Meeting of CoCom that took place on June 6–7, at which agreement was reached on an extensive revision of the West's system of export controls.

As this review was going forward within CoCom, the Senate Banking Committee began its consideration of the reauthorization of the Export Administration Act. The Subcommittee on International Finance and Monetary Policy of the Senate Banking Committee held oversight hearings on March 7 and March 28 to review the operation of the U.S. export control regime under the EAA and to consider what changes might be appropriate in light of the developments in Eastern Europe and within CoCom.

The Administration's views on the reauthorization of the EAA and the progress of the negotiations within CoCom were the subjects of the March 7 hearing. On March 28 the Committee heard from private sector representatives and former senior government officials on legislative changes to be made in the Export Administration Act that they deemed appropriate. A significant purpose of the hearings was to urge the Administration to move forward in a constructive fashion to achieve a significant agreement within CoCom. The witnesses who testified at those hearings are listed below:

March 7, 1990

Dennis Kloske, Under Secretary of Commerce for Export Administration; Allan Wendt, Senior Representative for Technology Policy, Department of State; Stephen Hadley, Assistant Secretary for International Security Policy, Department of Defense.

March 28, 1990

Paul Freedenberg, trade consultant, Baker and Botts, former Under Secretary of Commerce for Export Administration; Richard Perle, Resident Fellow, American Enterprise Institute former Assistant Secretary of Defense for International Security Policy; Charles Hough, Director of Trade Administration for Honeywell Inc., on behalf of the National Association of Manufacturers; William Burck, Assistant General Counsel—International, Data General Inc., on behalf of the American Electronics Association; Mark Ryan, Senior Attorney for Export Licensing, Hewlett Packard Company, on behalf of the Computer and Business Equipment Manufacturers Association.

At the March 7 hearing, Administration witnesses indicated that substantial change was taking place in U.S. and CoCom policy. Substantial progress was reported in negotiating creation of a li-

cense-free high technology trade zone within CoCom. The CoCom governments had committed themselves to eliminate all licenses within CoCom and to implement a "common standard" of enforcement by December 31, 1991. As an interim measure, most intra-CoCom licenses were to be eliminated in coming months with the remainder eliminated once the common standard came into force.

In addition, the Administration witnesses indicated the commitment of the United States to work with other CoCom governments to streamline the CoCom control list in order to remove outdated controls and to implement a differential control policy with respect to Eastern Europe that would provide expanded access to technology for the new governments in the region. In furtherance of this goal, the witnesses testified that the President had ordered a comprehensive strategic review of export control policy to form the basis for U.S. proposals to modernize CoCom.

Pending the outcome of that review, the United States had put forward, at a February 14-15 CoCom meeting, interim proposals differentiating between levels of decontrol that would apply to Eastern Europe as opposed to the Soviet Union and proposing some immediate streamlining for all destinations. At the meeting, an ambitious work program was set to develop streamlining proposals in three key sectors—telecommunications, computers and machine tools—and to develop a further decontrol agenda for the remainder of the year.

Private sector witnesses indicated support for the new direction in U.S. export control policy but expressed unhappiness with the current operation of the U.S. licensing process and a strong preference for a substantial change in U.S. policy. In the months preceding the hearing, the business community had developed an ambitious agenda for change in export control policy which was presented to the Committee, including numerous suggestions intended to simplify administration of the system and to eliminate controls they viewed as outdated.

In the weeks following the Subcommittee hearings, discussion continued in CoCom that produced an eventual agreement in Paris on June 6-7 including substantial decontrol as an interim measure and a commitment to develop a greatly streamlined control list, or "Core List", by the end of the year.

The CoCom agreement represented a very substantial change in the CoCom export control regime and provided the prospect for additional change in the near future. Given the progress made and the continuing multilateral process of reform that is going forward, the Senate Banking Committee attempted to develop legislation, working closely with the Administration, that would revise the statutory authority by which the President imposes export controls so as to encourage this process. At the same time, the Committee drew upon the suggestions of the business community on ways to improve the system and update the law.

The Committee received a letter from Commerce Secretary Mosbacher (see Appendix I) endorsing the Committee Print that served as the legislative vehicle for the Committee markup of the reauthorization of the EAA, although the letter expressed reservations about three provisions of the Committee Print. The Administration also endorsed the package amendment introduced by Senators Sar-

banes and Garn at the beginning of the markup which made a number of changes in the Committee Print. A summary of the provisions of the package amendment is contained in Appendix II.

Following is a summary of the provisions of the bill reported by the Senate Banking Committee with explanations of the reasons the Committee included the provisions in the bill.

Section 101. Short Title; Reference; Table of Contents

Section 101 provides that this title be cited as the "Export Administration Act Amendments of 1990", that references in this title are to the Export Administration act of 1979, and also includes the table of contents for the title.

Section 102. East-West Decontrol

The starting point for the Committee's bill was the agreement reached in the CoCom High Level Meeting of June 6–7. Section 102 incorporates the decontrol provisions of the CoCom agreement into the Export Administration Act, thereby setting a new floor for the imposition of export controls. Goods and technology removed from the control list by the agreement may be placed back on the list only by agreement of CoCom.

A complete summary of the CoCom agreement provided by the State Department is contained in Appendix III. In brief, the CoCom agreement removed controls entirely on approximately one-third of the items on the CoCom control list. In addition, except for telecommunications, computers, and semiconductor manufacturing, it removed controls up to the technology level for which licensing had previously been permitted with only notification to CoCom for the People's Republic of China, the so-called China Greenline. Special provisions were adopted for the three priority area of machine tools, computers, and telecommunications that had been targeted for early action by the United States.

In computers, the agreement removes controls worldwide up to 275 PDR (processing data rate), approximately one-half the level of the China Greenline. The agreement provides for licensing under national discretion procedures up to 550 PDR, approximately the China Greenline, and for licensing under favorable consideration (presumption of approval) procedures up to 1000 PDR.

In machine tools, the agreement decontrols to slightly above the China Greenline. Specifically, the agreement decontrols industry standard machine tools with positioning accuracies to the + or −2 micron level for grinding machines; + or −3 or 4 microns for milling machines; and + or −3 microns for turning machines.

The telecommunications provisions of the agreement apply specifically to Poland, Hungary, and Czechoslovakia. For those three countries the agreement provided for national discretion treatment for all common channel signaling equipment, and for fiber optic and microwave transmission equipment up to 156 megabits (slightly above the China Greenline) if three licensing conditions are met: (1) end-use certificates are provided; (2) any additional information will be provided on request; and (3) on-site inspections at any time will be permitted.

In addition, the agreement provided that East European countries which adopted CoCom-approved safeguard systems to protect

controlled technology imports would be eligible to purchase controlled high technology exports on a favorable consideration basis except for a few specified technology areas.

The agreement also called for the CoCom countries to agree by the end of 1990 on a new "Core List" of controlled goods and technologies. The Core List would be a "positive" list of controlled goods and technology rather than a negative list of goods that were not controlled, and would likely further narrow the range of high technology exports subject to licensing.

The agreement incorporated the principle of differentiation between the countries of Eastern Europe and the Soviet Union. The special treatment provided by the agreement for East European countries did not extend to the Soviet Union. This policy was based on the view that while the strategic threat posed by the East European countries to the West had fundamentally changed, the same could not be said for the Soviet Union. The agreement thus distinguished between the East European countries and the Soviet Union in relaxing export controls, although the Soviet Union would benefit from the general decontrol provisions contained in the CoCom agreement.

A key issue of concern to the Committee was that the CoCom agreement be implemented in such a way as not to place U.S. exporters at a competitive disadvantage with exporters from other CoCom countries. Much of this concern centered around the provisions of the CoCom agreement which permit CoCom countries to sell certain technologies under national discretion and favorable consideration procedures, which leave much latitude to the individual countries to set licensing requirements.

In response to this concern, Section 102 directs the Commerce Secretary to consider the actions of the other members of CoCom in approving or denying licenses that are subject to such procedures and to seek to insure that U.S. exporters are not placed at a competitive disadvantage.

Section 102 also requires the Commerce, State and Defense Departments to report to the Senate Banking Committee and the House Foreign Affairs Committee by April 1, 1991 on the status of implementing the CoCom agreement, including the national discretion and favorable consideration procedures. The report is also to address progress made in implementing the Core List and the special licensing procedures for East European countries which adopt CoCom-approved safeguard systems to protect controlled technology imports.

Section 102 would also require the Under Secretary of Commerce for Export Administration, the Under Secretary of State for International Security Affairs, and the Under Secretary of Defense for Policy to testify before the Senate Banking Committee and the House Foreign Affairs Committee not later than May 1, 1991 on the report. The Committee specifically included this requirement in the bill because of the importance it attaches to the accountability of senior policymakers for implementing the Export Administration Act and, in particular, the ambitious reform agenda being pursued at CoCom.

Section 103. Exports Subject to National Discretion and Favorable Consideration

Section 103 establishes time limits within which the Secretary of Commerce must act on license applications for goods and technology subjet to CoCom national discretion treatment and favorable consideration treatment. National discretion treatment, which is accorded to the lowest levels of CoCom controlled exports, allows export applications to be unilaterally approved by members countries and requires only that the exporting nation notify CoCom of approved applications in a monthly report. Favorable consideration treatment requires referral of the case to CoCom where it enjoys a presumption of approval for civil end-uses. Once received by CoCom the member nations have thirty days in which to object to the issuance of the license, and if no such objection is voiced the export license can be issued.

Two concerns convinced the Committee that it was appropriate to set concrete time limits within which the Secretary of Commerce must act. First, expeditious review should present no problem for the system since these procedures are employed only for exports of less sophisticated controlled items. Second, competition for high-tech markets in Eastern Europe will be intense and, given the willingness of other CoCom governments to review and issue licenses quickly, it is essential that U.S. license applications be handled expeditiously. Accordingly, the Secretary must formally issue or deny a license application within 15 days for exports subject to national discretion treatment. For exports subject to favorable consideration procedures a license must be formally denied or forwarded to CoCom within 30 days, unless the Secretary of Commerce notifies the applicant in writing that more time is required, in which case the Secretary may take up to an additional 30 days to act.

Section 104. Statement of Policy Toward Countries Representing a Lesser Strategic Threat

This section establishes a framework for relaxed export control policy toward controlled countries whose actions to protect Western technology permit their designation as a lesser threat. While the provision focuses narrowly on the terms and conditions for access to advanced technology by certain controlled countries, the policy it encompasses is a response to the broader political change that began in Poland and spread through much of Eastern Europe during 1989.

In recognition of these developments, the United States and other members of the Coordinating Committee reexamined CoCom policy with respect to these countries to determine if a basis could be established for relaxed technology access. Such a policy change had particular significance for Eastern Europe because of the overwhelming need for economic modernization in the region and the intense interest of the new governments there in obtaining access to technology from the West.

At the CoCom High Level Meeting on June 6–7, a new policy was announced for countries that could be determined to represent a lesser strategic threat with respect to technology security owing to democratization and to specific changes in domestic technology

policy. The changes in policy that would be required to warrant such a reevaluation include adoption of an effective export control system, particularly a system of effective laws and penalties for violations; adoption of technology security arrangements for Western technology including end-use assurances and inspection and verification procedures; and termination of intelligence cooperation with other controlled countries relating to illegal acquisition of Western technology.

If the lesser strategic threat determination were made by the CoCom governments with respect to a country, then CoCom governments would consider export applications for all but a very short list of the highest technology products under favorable consideration procedures. These procedures involve a presumption of approval for goods or technologies destined for civil end uses and a thirty day fixed time limit on consideration of cases. This policy would assure such countries access to very high speed computers, advanced telecommunications systems, semiconductor manufacturing technology, and a range of other sophisticated technologies that have generally been denied to them by the West.

The Committee strongly supports this shift in policy toward countries representing a lesser strategic threat. Consequently, this provision would codify the elements of the CoCom agreement regarding this group of countries. The provision directs the United States to take the lead by proposing CoCom adoption of the liberalized licensing procedures as soon as the Secretary of Commerce, in consultation with the Secretaries of State and Defense, determines that those governments have taken steps to implement the criteria.

The policy changes necessary to implement fully this new policy on both sides are profound. Their full implementation will require a level of trust and cooperation between the new governments of these countries and the United States and other Western governments that is unprecedented in the post-war era. If aggressively pursued by the East European governments, initial legal and policy changes necessary to trigger adoption of the new procedures by CoCom could occur during 1990.

The Committee encourages prompt action on both sides so that economic reconstruction can begin in the East and trade links with the West can be strengthened. However, full implementation of a policy of liberalized technology access will require confidence building on both sides over a period to time. In recognition of the long-term nature of this process, the Committee amendment goes beyond the CoCom agreement in directing U.S. authorities to conduct an annual review of performance regarding appropriate use and protection of controlled technology. If performance is satisfactory, the Secretary of State is to propose further liberalization to CoCom, or tightening of controls in the case of increased security concerns.

Finally, the provision provides that when these countries have not only provided comprehensive technology security but have also reduced offensive military capabilities, phased out of the Warsaw Pact, and removed Soviet troops, the President should seek CoCom agreement to upgrade their licensing status to that of a free world or cooperating country. In furtherance of these objectives, the Secretary of Commerce is directed to provide the greatest possible

technical assistance to East European governments, in particular regarding establishment of adequate export licensing and enforcement regimes.

Section 105. Removal of Section 5(k) Designation

This section amends section 5(k) of the current law. That provision directs the Secretary of State to negotiate agreements with non-CoCom governments for the purpose of reaching agreement with them on export controls comparable in practice to those CoCom. If such agreements can be negotiated, the Secretary of Commerce is authorized to treat exports to such cooperating countries in the same manner as exports to a CoCom country. The intent of current law is to achieve a balance of benefits and obligations in any such agreement, with licensing benefits maintained only as long as, and to the extent that, effective protection of controlled technology is maintained.

The Committee strongly supports the goals of this section of the Act and wishes to encourage its greatest possible use in expanding technology cooperation. However, this amendment is intended to underline the logic of this section that licensing benefits should only be maintained if the cooperating country in fact fulfills its commitment to control technology to the same extent as a CoCom government. If a country fails to honor this commitment, benefits should be restricted or terminated.

Section 106. Policy Toward Countries Receiving Licensing Benefits

This section is a response to the increased risk of diversion of high level technology which is an almost inevitable byproduct of the very political revolution in Eastern Europe that is reducing tensions in Europe and permitting expansion of East-West trade. As the United States eases licensing to Eastern Europe in response to pledges of cooperation from governments, the integrity of the system is threatened by the actions of individual bad actors in cooperating countries, such as former security agents in emerging East European democracies.

This provision amends Section 11A of the Act, which directs the President to impose import and government procurement sanctions against a foreign person from a CoCom country in any case in which the President determines that a very serious violation of a CoCom export restriction has occurred and has resulted in a "serious adverse impact on the strategic balance of forces." The amendment would extend the reach of Section 11A to persons from any country outside of CoCom that is receiving expanded licensing benefits from the United States or CoCom pursuant to a cooperative export control agreement, including both 5(k) countries and those designated as representing a lesser strategic threat in Eastern Europe. The amendment specifies that the provision shall apply to the German Democratic Republic until it becomes part of a unitary German state within CoCom.

The amendment puts bad actors from all such countries on notice that if they seriously undermine U.S. security, they will face stern sanctions. In order to ensure that companies without any significant exporting or government procurement relationships with the United States are caught by sanctions, the amendment adds a

denial of export privileges to or by the sanctioned party to Section 11A. The export penalty would restrict U.S. exports only in the case of a bad actor designated by the President, the same general policy that now applies in the case of diverters blacklisted by the Secretary of Commerce.

The Committee recognizes that the threat of sanctions against foreign persons will generate some resistance from foreign governments concerned about the extraterritorial reach of U.S. law. It could also reduce the incentive for cooperation from potential 5(k) and other cooperating countries. However, this effect should be small for 5(k) countries given the powerful incentive of essentially license-free trade for those receiving full CoCom treatment.

The disincentive should be similarly small in Eastern Europe given the total lack of sympathy expressed by leaders in those countries for any bad actors that undermine their new trade status with CoCom. Moreover, licensing benefits that apply to all high technology trade should far outweigh any calculation of cost associated with sanctions applied only to individual bad actors. In addition, while most countries are sensitive on the issue of extraterritoriality, many countries are willing to accept the application of sanctions grounded in shared multilateral strategic concerns.

Section 107. Controls on Telecommunications

Section 107 contains special provisions relating to telecommunications equipment and was included by the Committee in recognition of the crucial role such equipment is destined to play in the formation and maintenance of pluralistic economic and political systems in Eastern Europe. In light of these considerations Section 107 states the policy of the United States that exports of telecommunications equipment should receive the most favorable treatment permissible within the limits of the recent CoCom agreement.

In recognition of the dramatic changes that have occurred in Czechoslovakia, Poland, and Hungary, the Secretary of Commerce is directed to accord those nations national discretion and favorable consideration treatment for telecommunications equipment as provided in the CoCom agreement once they have provided credible end-use assurances, on-site inspections, and verified access to all required information. The Secretary of Commerce is also directed to consider exports to countries that represent a lesser strategic threat under the favorable consideration procedures as set out in the CoCom agreement.

The arguments for liberalized access to communications technology apply equally to voice and data communications. The Committee included a definition of telecommunications equipment in order to make clear that the provisions of Section 107 apply to the transmission or receipt of data as well as voice signals, both analog and digital. To underscore its concerns in this area, the Committee added specific negotiating guidelines on computer network software and related equipment.

While the CoCom agreement liberalized export rules for computers and local area networks, it did not address wide area networks that integrate computers at multiple locations, which is essential to many modern computer applications such as common carrier and hotel reservation systems, automated teller machines, inventory

control systems, university, and governmental and private data bases. Because such systems are critical to commercial modernization in Eastern Europe, Section 107 provides that the U.S. should propose to CoCom that exports of computer network software and related equipment to countries that represent a lesser strategic threat should be accorded the same licensing treatment as computer systems exported for interconnection to such networks and shall be in accordance with telecommunications controls established by CoCom. It is the Committee's understanding that there is no national security objection to liberalized treatment of wide area networks and therefore the Committee expects that the Administration will make such proposals to CoCom in the near future.

Section 108. Exports to CoCom

This section provides statutory direction to eliminate U.S. licensing of goods and technology to, among, and from CoCom countries, with limited exceptions, by not later than December 31, 1991. This action would fulfill the U.S. commitment negotiated with other Coordinating Committee governments to create a license-free CoCom. When fully implemented, this provision would, in general, permit shipment of all goods and technology to, among, and from CoCom countries without prior approval by the U.S. Government.

This directive is a further refinement of language added to Section 5 of the EAA in the 1988 trade bill which called upon the Secretary of Commerce to eliminate all licensing requirements for any country in CoCom that the Secretary determined was implementing an effective export control system consistent with principles agreed by CoCom. In the two years since the trade bill became law, the Secretary has not found any country that meets the requirement for license free treatment.

However, in response to congressional interest and the desire of CoCom governments to promote the freest possible trade among member governments, the United States and the other CoCom governments pursued negotiations last year intended to achieve fully license free trade within CoCom at such time as the member governments implemented an agreed "common standard" of enforcement. As an interim step, member governments agreed to eliminate licenses for all goods and technologies except those retained on an "exclusion list" of technologies that would continue to require licenses. Licenses for items on this list would also be eliminated when the common standard came fully into force.

CoCom governments set December 31, 1991 as the deadline for full implementation. At the CoCom High Level Meeting of June 6–7, 1990, member governments adopted a more specific deadline for the objective of implementing the common standard by April 30, 1991. The Committee welcomes this strengthened commitment and encourages rapid implementation of the common standard. The amendment places the December 31, 1991 deadline for license free CoCom trade in statute in anticipation of full implementation of the new system by that time.

The amendment provides certain limited exceptions from the general rule of a license free zone. The Secretary of Commerce may require licensing for unreliable end users blacklisted by Commerce, as specified by regulation. Licenses may be required for exports

controlled as provided by special multilateral control arrangements. The Committee intends this to be a very limited exception to the general rule in cases where an extremely sensitive dual use technology, not even widely available within CoCom, could be controlled within an otherwise license-free CoCom by a negotiated arrangement of an effective producers' "cartel." Controls would be limited to those specified in the negotiated arrangement. Licenses may also be required only on reexports from a CoCom country to a non-CoCom country of items specified in Section 5(c)(4)(B) of the EAA: supercomputers, goods or technology for sensitive nuclear uses (as defined by the Commerce Secretary), and devices for surreptitious interception of wire or oral communications.

Finally, license-free treatment is denied to any CoCom country that has failed to adopt measures necessary to achieve the common standard of enforcement. While current law permits license-free treatment if a country meets the standard, this amendment reverses the situation, eliminating licenses except for those that fail the test of effective enforcement. The existing provision has never been implemented because the executive branch did not want to highlight bad performance, even by recognizing good performance. This provision will force the executive branch to single out poor performers, a step they have now indicated they are ready to take given the commitments all CoCom governments have made to enforcement. By the terms of the amendment, if the Secretary, in consultation with the Secretary of State, cannot determine that the specific enforcement elements set out in the amendment have been met, then the Secretary is required to retain appropriate licensing requirements. The Secretary of State is further directed to seek the cooperation of CoCom in imposing comparable residual licensing requirements on the recalcitrant member of the CoCom. It is the Committee's intention that the role of various Departments in the licensing process under current law shall not be affected by this provision.

Section 109. Distribution Licenses and Operations Licenses

This section authorizes the Secretary of Commerce to grant distribution and operations licenses for exports to all countries, including controlled countries. Previously, both types of licenses were not available for exports to controlled countries. The Omnibus Trade and Competitiveness Act of 1988 (OCTA), however, amended the Export Administration Act to allow such licenses for exports to the People's Republic of China, based upon the belief that it no longer presented the same strategic threat as the Soviet Union and the Warsaw Pact countries. In light of recent developments in Eastern Europe and the Soviet Union the Committee has concluded that the Commerce Secretary should be given authority to grant these types of licenses for exports to controlled countries. In granting the Secretary discretion to issue these types of licenses, however, the Committee does not intend that discretion to be unfettered, as the statutory basis for Defense Department review of these licenses is retained under Section 10(g).

Section 110. Trade Shows

Under current law, a trade show license may be obtained for temporary shipment of any good controlled for national security purposes, except supercomputers, goods that might be used outside certain countries in sensitive nuclear activities, or goods which are useful for surreptitious interception of communications. Such a license permits demonstration or exhibition at a trade show located in the free world, provided the United States exporter retains title to the good during the entire period it is in that country and removes the good from that country no later than at the conclusion of the trade show. For the puroses of national security controls, the 1988 trade bill permitted trade show licenses for the People's Republic of China, without regard to their technical specifications, under a presumption of approval. This section broadens this provision further to cover licenses to export to any controlled country for the purposes of demonstration or exhibition at a trade show.

The Committee has modified the trade show provision in two important respects. First, it added the requirement that the United States exporter comply with any safeguard requirements imposed by the Secretary for the period the good is in the controlled country. The Committee intends to give the Secretary broad discretion to impose safeguards, such as special shipping instructions or restrictions on the software for computers to be demonstrated or exhibited. Second, the bill gives an exporter a reasonable time to remove the good after the trade show or demonstration concludes, as defined by regulation, to make these licenses practical to use.

Section 111. Technical Data

This section makes several important changes relating to the control of technical data exports. It requires that at the time the Core List is implemented, but not later than June 30, 1991, technical data subject to licensing requirements must be included in that list as well. The bill also provides that any general or validated license authorizing the export of any goods or technology shall also authorize the export of operation technical data related to such goods or technology. This provision applies regardless of whether the operation technical data is specifically referenced in the license or license application. Operation technical data subject to this rule is limited so as not to exceed the minimum level necessary to install, repair, maintain, check, operate or use the goods or technology.

The Committee intends the operation technical data provision as a practical rule, permitting the export of necessary information related to the subject of an export license, but also seeks to limit such data to the minimum necessary to perform specific service functions. The export of technical data exceeding that level, such as information or software that would provide system upgrades, would require additional license authority.

Section 112. Standard of Measurement for Computers

This section requires the Secretary of Commerce to propose regulations that update and, where appropriate, revise or replace the standard of measurement currently used for computers other than

supercomputers, which is known as the Processing Data Rate. Before the Secretary can propose a definition, two conditions must be met: recommendations for a new standard must be received from the relevant technical advisory committee; and the United States delegation must consult as appropriate with CoCom concerning the standard.

This section provides guidance to the Secretary in formulating a definition: a new measurement shall reflect the performance capabilities of computers and shall rely, to the maximum extent possible, upon objective measurements commonly understood by the computer industry. The Secretary shall consider factors such as the instruction rate, the input/output system and the memory system of computers. In addition, the Secretary should consider two systems for processing data that greatly enhance the performance capabilities of computers, vector processing and parallel processing. The Committee believes that the Processing Data Rate measure is becoming outdated with the emergence of significantly faster processors and new computer designs, and the Secretary must develop a broader standard of measurement that keeps pace with technological developments in furtherance of our national security and foreign policy objectives.

Section 113. Control List Review

This section updates and revises subsection 5(c) of the Act regarding review of the control list. The Committee is updating the section to reflect the fact that, since the control list no longer includes unilateral national security controls and will be based on the CoCom Industrial List, U.S. list review is really no longer an independent regulatory exercise but a stage in the process of CoCom list review.

In recognition of this fact, the amendment would make list review by the Secretary serve as basis for U.S. proposals to revise the CoCom list and would coordinate the U.S. process with a 3 year cycle for review of the international list. Any changes in the list would have to be consistent with, and effective no later than, parallel changes in the CoCom list. Language would also be added requiring that the U.S. list review consider policy changes arising from the indexing analysis made mandatory by Section 114 of this bill.

Section 114. Indexing

Section 114 would revise the indexing provision of the EAA to require that the Secretary of Commerce incorporate an indexing analysis into the list review process. The indexing analysis is designed to provide technical justification for increases in the performance levels of controlled goods and technology. This will ensure that technological advances are fully considered as the Secretary determines what items should be decontrolled.

In formulating procedures for the indexing analysis, the Secretary of Commerce is to seek the advice of the appropriate technical advisory committees. Such indexing analysis is required to set minimum levels of technology below which exports should be decontrolled, and to consider the specifications of the most technologically advanced version of the same or equivalent goods or technology

which are commercially available in setting these minimum levels. The indexing analysis must also apply to supercomputers subject to security safeguard procedures.

In order to ensure that the indexing analysis is fully utilized, the results of the analysis are to be incorporated into U.S. proposals to CoCom unless the proposals would adversely affect the nation's security. Any such finding must be justified in a report to Congress.

In this revision to the current EAA indexing procedure, the Committee has endorsed more formal procedures to ensure that items are not controlled after the technological justification for their control has lapsed. The Committee has recognized, however, that technological advances are not the sole factor which must be considered in the decision to decontrol goods and technology.

Section 115. CoCom Representative

Section 115 requires that the Secretary of Commerce, or his designee, be a member of the permanent United States delegation to CoCom. This provision reflects the strong view of the Committee that the Commerce Department, which administers the U.S. export control system, should bring its expertise to bear on the CoCom process and be a full participant in its deliberations.

Section 116. Report on Implementation of Section 10(g)

Section 116 requires the Secretaries of Commerce and Defense to submit a report by January 15, 1991 to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Foreign Affairs on the implementation of the dispute resolution procedure provided in Section 10(g) of the EAA. Section 10(g) authorizes the Secretary of Defense to review any proposed export to a controlled country that would make a significant contribution to the military potential of such country that would prove detrimental to the national security of the United States.

The 1988 amendments to the EAA attempted to prevent undue delays caused by Section 10(g) reviews by providing that if the Secretary of Defense fails to reach a decision within 20 days, or if the President fails to make a decision within 20 days of receiving a recommendation from the Secretary of Defense, then the Secretary of Commerce is free to approve or deny the application on his own authority. The Committee decided to request this report on the implementation of the Section 10(g) dispute resolution procedures in light of continuing concern that license applications subject to Section 10(g) review often require more time than is contemplated by the 1988 amendments to the EAA.

Section 117. Relation to Munitions List

The Committee recognized the significant trade, national security, and foreign policy implications involved in the decision to place a particular good or technology on the Commodity Control List (control list) established under the EAA for dual use items and administered by the Commerce Department, or on the Munitions List (ML), established under the Arms Export Control Act (AECA) for munitions items and administered by the State Department with substantial guidance from the Defense Department. Munitions con-

trols are administered with reference to foreign policy as well as national security considerations regarding transfer of arms abroad.

Dual use controls, however, start from the assumption that items on the contol list are general industrial goods. Trade in these goods should only be restricted if there is reason to believe that a specific shipment or type of commodity will assist the military potential of an unfriendly country. Munitions items are often embargoed to destinations where control list items are not. Thus, designation of an industrial good as a munitions item may shift it to more restrictive licensing since its status becomes that of a weapon rather than a general traded good.

Because of the importance of this issue, the Committee amendment would establish a procedure for determining which law governs in specific cases. Because both lists are phrased broadly to give their implementing agencies' flexibility, the lists can overlap, resulting in a particular commodity requiring a license from both the Departments of Commerce and State.

This section states the rule that no item may be included on both lists at the same time. Whenever the Secretary of Commerce or the Secretary of State finds that a particular item is controlled on both lists, the Secretary making the finding shall promptly notify the other Secretary. They then have 20 days to decide on which list the item should appear. If no agreement is reached, they must provide the President with all relevant information supporting their positions and the President shall make his determination within 20 more days and so notify the Secretaries. The Committee expects that the Secretaries will carry out the President's determination expeditiously.

To reduce the number of potential disagreements over commodity jurisdiction, the Committee has included two definitional elements in this section. First, it adopts the general rule that for purposes of controlling goods under Section 5 of the EAA (i.e., for national security purposes), dual use items included on the CoCom Industrial List shall be controlled under the Commerce Department's control list effective with the implementation of the "core list" but not later than March 31, 1991. This definition, when combined with the previously discussed rule that no item may be on both the control list and ML, means that all goods and technology on the CoCom Industrial List shall be controlled exclusively under the EAA and not the AECA. However, to insure that the President retains the discretion necessary to deal effectively with circumstances that exist now or may arise in the future, an exception is created to the general definition. If the President determines that "exceptional circumstances" exist and reports those circumstances to Congress within 10 working days of the determination, an item that is on the CoCom Industrial List and, hence, on the control list for national security control purposes, may be moved from that list to the ML. The Committee intends that this authority be used only in a very limited number of cases where the munitions licensing restrictions are clearly justified, as may be the case with certain items that employ cryptography to ensure the confidentiality of data.

For items that may be on the control list for foreign policy or nuclear nonproliferation purposes, the dispute resolution procedure

described above still applies, as does the rule that no item may be on both the control list and ML. However, if the President determines that a foreign policy-controlled item on the control list should be controlled under the ML, the requirements of a finding of exceptional circumstances and a report to Congress do not apply, although the Committee expects the Administration to notify Congress of significant changes of policy concerning the allocation of items on the two lists pursuant to the normal reporting requirements under the Act.

The second, more specific definitional element provided in this seciton is a requirement that the Secretary of Commerce shall issue regulations defining the term "dual use goods and technology" no later than March 31, 1991. A number of definitions have been suggested by industry and by the agencies, and the Committee expects the Secretary to consider these carefully in developing regulations. At mark-up of the bill, Senator Graham, the sponsor of this provision, suggested several elements that might form the basis for a definition:

(a) items and technologies would be characterized as "dual use" which have an identifiable civil application or which have the capacity and functions that are essentially equivalent to those used in civil applications;

(b) items and technologies that are not specifically designed, developed, configured, adapted or modified for military or intelligence application; and

(c) dual use technology is technology, as that term is defined in Section 16(4) of this Act that is required for dual use goods.

Section 118. Enforcement Authority

This section gives the Department of Commerce an additional law enforcement tool concerning exports. It provides that all goods or technology lawfully seized by officers or employees of the Department of Commerce shall be forfeited to the United States. It also provides all necessary authorities to complete forfeiture proceedings, including authority to dispose of such items or the proceeds from their sale, or to otherwise settle a United States claim in a forfeiture proceeding. The Secretary of Commerce also may request another agency which is duly authorized to manage and dispose of seized property, such as the United States Customs Service or the United States Marshals, to carry out the necessary forfeiture duties.

Section 119. Foreign Policy Controls

This amendment amends Section 6 of the EAA which authorizes the imposition of export controls to further the foreign policy of the United States. The first part of the amendment emphasizes the requirement in current law that the President may impose, extend or expand foreign policy controls only if the criteria in Section 6(b)(1) have been met. It also deletes an outdated reference to the 1985 amendments to the EAA.

The second part of the amendment amends subsection (3) of Section 6(h), the special foreign availability provision for Section 6 controls, to place a time limit on unilateral foreign policy controls. If foreign policy controls have been imposed and the President is not

able to secure the cooperation of appropriate foreign governments to limit foreign availability, the Secretary must make a determination of foreign availability. Within 12 months of their imposition, the Secretary is required to remove foreign policy controls on goods or technology unless the foreign availability has been eliminated or a multilateral arrangement has been achieved among the major suppliers by that time. The controls may be continued if the President determines essential foreign policy interests require continuation of the controls. While allowing the President ultimate discretion, this revision modestly restricts usage of the special foreign availability provisions for foreign policy controls and encourages the establishment of multilateral control regimes for foreign policy controlled goods and technology.

Section 120. Missile Technology

The Committee has become increasingly concerned about proliferation of technologies capable of producing and delivering weapons of mass destruction. These proliferation concerns present complex legal issues because they involve munitions and dual use items controlled by different U.S. agencies pursuant to two different laws, the Arms Export Control Act and the Export Administration Act. Internationally, they are complex because our principal multilateral export control arrangement, CoCom, does not currently handle North-South proliferation issues and there is no consistent policy with regard to licensing and control of chemical or missile technology among the CoCom countries.

To address the gaps in multilateral control, alternative multilateral groups like the Australia Group, which attempts to limit chemical weapon proliferation, and the Missile Technology Control Regime (MTCR) have been established to address proliferation concerns. The MTCR was created in recognition of the fact that since twenty or more countries either have or are acquiring the capability to produce missiles, missile technology represents an increasing threat to U.S. front line forces and to regional stability.

In 1987, the United States responded to this threat by joining Canada, Japan, France, the United Kingdom, Italy, and the Federal Republic of Germany, the major producers of missile technology in the West, in creating the MTCR. Recently several other countries—the Netherlands, Spain, Belgium, Luxembourg, Australia—have joined the MTCR. This multilateral control effort was a welcome step but it has several serious weaknesses. It is a new and informal arrangement that has been criticized as ineffective, even in controlling shipments from its member governments. It fails to involve all producers, especially China. Finally, it has no common standard of enforcement.

The weaknesses of current missile non-proliferation efforts could be made even worse if East-West decontrol by CoCom were to exacerbate the proliferation problem by creating new channels of proliferation through CoCom and Eastern Europe. The Committee therefore welcomed the Administration's decision to maintain controls under Section 6 of the Act for six categories of goods and technology decontrolled for national security purposes but of concern for proliferation purposes. The Committee supports maintenance of ap-

propriately focused proliferation controls as a necessary security measure.

In recognition of the fact that missile proliferation will be a continuing export control challenge for the future, the Committee adopted provisions intended to encourage a more comprehensive and effective multilateral control effort and to remedy the weakness of the present statutory basis for control in U.S. law. The amendments focus on control and enforcement of dual use technologies that are subject directly to the jurisdiction of the Act or are controlled multilaterally in cooperation with U.S. controls maintained under the Act.

Several Committee amendments have been combined in a single section of the bill. The first provision, added to the policy section of the Act, calls on the Administration to renegotiate the MTCR to improve its effectiveness and to increase the number of countries participating in the regime.

A second provision would create a new Section 6(k), a foreign policy parallel to Section 5(k), making the Secretary of State responsible for negotiating cooperative agreements to bar proliferation of missile systems and the weapons such systems are capable of delivering. If these negotiations produce agreements on export restrictions which are determined to be comparable to those embodied in the CoCom common standard of enforcement, the Secretary would be give authority to liberalize export control treatment of goods and technology under this section up to and including treatment fully as favorable as that available to CoCom countries for export of goods and technology under Section 5. Any determination under this section would be subject to annual review.

A third provision would place the basic requirement to license dual use missile tochnology in Section 6 of the Act. It would require establishment of a control list for those dual use goods and technology that would provide a direct and immediate impact on development of missile delivery systems. The Committee intends that such controls apply to those items with direct applicability to missile systems.

Licenses would be required for export to any country except cooperating countries, as designated by the President in Commerce regulations, and licenses would generally be denied to missile facilities in an MTCR non-adherent country or to terrorist countries. The Committee intends for the term "facility" to be interpreted broadly to include covert projects and "front" organizations for missile development efforts. Referral of licenses to the State Department would be required and, if requested, to the Defense Department for goods or technology on the MTCR annex of equipment and technology destined to countries determined by the Secretary of State to be of concern to the U.S. regarding missile proliferation.

The final amendment added to this section would require sanctions against foreign persons who, after the date of enactment, are determined by the President to have assisted missile proliferation through shipment of dual use goods. Sanctions would be imposed on any person who knowingly attempted to export, import, or obtain dual use items on the MTCR annex for purposes of assisting in development or production of missiles capable of delivering

chemical or nuclear weapons in a country designated as of concern by the Secretary of State. The sanctions would be limited to cases in which the goods and technology shipped were items that would be, if they were U.S. goods or technology, subject to the jurisdiction of the United States under this Act. This formulation attempts to draw the appropriate jurisdictional boundary between the authorities of the EAA and the Arms Export Control Act, and consequently would not impose sanctions for shipment of those items on the MTCR annex which are munitions items.

The sanctions and exceptions are similar to those required for multilateral violations under Section 11A of the Act, with the addition of the export sanction added to Section 11A by Section 106 of this bill and to those required for chemical weapons violations under S. 195, the "Chemical and Biological Weapons Control Act of 1990," recently passed by the Senate. The key difference between these sanctions and the requirements of Section 11A and S. 195 is that the conditions under which sanctions could be imposed are limited here and the President would be given broader discretion not to impose sanctions. As in those other sanction provisions, contract sanctity would apply.

Sanctions would be authorized only after consultation with the government of primary jurisdiction, and they would be barred if the President determines that adequate corrective action had been taken by that government. Sanctions also would be barred if the President determines that the shipment was authorized by a government cooperating in efforts to stem missile proliferation. Finally, the President may waive snactions in any case if the President determines that a waiver is essential to U.S. national security.

Section 121. Lithuania

This section states that it is the sense of the Senate that no exports to the Soviet Union that are still controlled after the 1990 EEA amendments become effective, may be licenses for sale by U.S. exporters until the President certifies that the Soviets are seriously negotiating self-determination with the Lithuanians without using economic coercion.

Today, after years of courageous, disciplined and peaceful struggle, the people of Lithuania, Latvia, and Estonia are on the verge of ending fifty years of brutal oppression by the Soviet Union. The predominantly pro-independence legislatures of all three Baltic countries, recently elected in the first free elections in Soviet history, have declared the restoration of their nations' independence, and have petitioned Moscow to join them in good-faith negotiations to work out a mutually acceptable transition to independence. Moscow, however, has responded with military intimidation and economic blackmail, cutting off vital supplies to Lithuania for weeks. Only recently, after the Lithuania government agreed to temporarily suspend implementation of its independence declaration, did Moscow ease the embargo and agree to consider negotiations.

At this critical juncture, it is vitally important that the United States government clearly state its commitment to Baltic self-determination, a commitment embodied in our fifty-policy of not recognizing as legitimate the forcible incorporation of the Baltic States

into the Soviet Union. The Soviet leadership must understand that they cannot expect to reap the benefits of improved economic relations with the U.S. while continuing to deny the Baltic States the rightful restoration of their freedom.

Just as the Senate voted overwhelmingly in April not to consider U.S.-Soviet trade agreements until the Soviets end their economic coercion and enter into negotiations with the Lithuanian government, we must reiterate that message now in regard to export benefits.

While our government must support President Gorbachev's reforms and applauds his role in the dramatic transformaion of Eastern Europe, we must not reward him for thwarting the same democratization in the Baltic States. At this historic time, the United States must keep the pressure on the Soviet leaders to pursue a peaceful and just resolution of the Baltic crisis.

Section 122. Policy Toward the People's Republic of China

This section makes findings that U.S. and CoCom licensing preferences for China must be reevaluated in light of human rights abuses there and Chinese assistance in the proliferation of missiles and nuclear technology. It establishes a new policy of eliminating CoCom licensing preferences and restricting access to dual use technology representing proliferation concerns.

In fulfillment of that policy, direction is provided that the U.S. representative to CoCom should oppose preferential treatment for the PRC compared to other controlled countries in the context of the core list exercise being undertaken by CoCom. China should receive no more favorable treatment than the Soviet Union in that exercise. If the President determines that more favorable treatment for China is necessary, for example, to avoid pressure for unwarranted liberalization for the Soviet Union, the President would be required to take no action until 30 days after reporting the determination and justification to the Congress.

In addition, a new Section 6(q) would be added to the EAA requiring denial of licenses for export of goods and technology to China that are controlled pursuant to multilateral chemical weapons or missile technology agreements absent adequate assurances regarding end use and non-transfer to countries representing proliferation concerns. The Secretary of State would be directed to seek multilateral support for this policy and the policy would continue until such time as the President determines and reports that China has ceased to act in a manner inconsistent with multilateral non-proliferation efforts.

Section 123. Authorization and Extension

Section 123 authorizes appropriations of $44,523,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992 for the Department of Commerce to carry out the purposes of the Act, of which $150,000 is to be used each year only for the Department of Commerce representative to the permanent United States delegation to CoCom, as provided in Section 115 of this Act.

TITLE II—EXPORT PROMOTION

OVERVIEW

Recent events have made it clear that a world economy dominated by Cold War confrontation is giving way to one global economic competition. World leadership in such an economy will be based on economic performance including an ability to compete effectively for export markets. While trade promotion is only one event of what must be a national effort to enhance our export competitiveness, it is an important element. In this Title the Committee has formulated several provisions that are designed to strengthen our nation's overall trade promotion efforts and ensure closer Congressional oversight over such efforts.

Section 201. Export Promotion Authorization

This Section authorizes the appropriation of $164,599,000 for fiscal year 1991, and such sums as may be necessary for fiscal year 1992, for the Commerce Department to carry out its export promotion activities including the operation of the United States Foreign and Commercial Service.

The Section also authorizes the appropriation of $6,000,000 for fiscal year 1991, and such sums as may be necessary for 1992, to the Commerce Department to carry out the responsibilities given it by Section 2303 of the Omnibus Trade and Competitiveness Act. That section of the trade bill authorized the Secretary of Commerce to develop a Market Development Cooperator Program by entering into contracts with nonprofit organizations, trade associations, state departments of trade, or private industry for the services of individuals who will help expand U.S. exports. The costs of activities under such contracts are to be shared equitably among the Department of Commerce, the coopeator involved and, whenever appropriate, foreign business. The program would permit the detail to the U.S. and Foreign Commercial Service of individuals with expertise that could be helpful in gaining better access for certain U.S. goods in various markets. It should be noted that under Section 2303, the Cooperator who details a person to assist the U.S. and Foreign Commercial Services is responsible for paying that individual's salary and related expenses.

Contracts may be entered into under this authorization only to the extent that funds are appropriated to carry out the Market Development Cooperator Program.

Section 202. Minister-Counselors

The Congress and Administration decided in 1979 that United States commercial trade activities in our diplomatic posts abroad should be primarily the responsibility of the Department of Commerce rather than the Department of State. Since that time Foreign Commercial Service officers have been employees of the Department of Commerce. In the Omnibus Trade and Competitiveness Act of 1988, the Congress and Administration decided that it would benefit U.S. commercial interests if a limited number of senior Foreign Commercial Service officers were permitted to have the diplomatic title of Minister-Counselor. It was reasoned that the

title would further U.S. trade interests by providing better access to high ranking foreign government officials and policy makers. The Secretary of Commerce was authorized to designate eight United States foriegn posts at which the senior Foreign Commercial Service officer could carry out the diplomatic title of Minister-Counselor.

At a recent hearing held by the Banking Committee on June 14, 1990, Commerce Secretary Mosbacher testified that all eight Minister-Counselors positions had been filled and that the United States and Foreign Commerical Service could effectively utilize four additional positions. In light of the growing number of new trade opportunities in Eastern Europe and elsewhere, and of the need to give even higher visibility to trade promotion activities, the Committee decided that the Secretary of Commerce should be able to increase from eight to twelve the number of posts at which the senior Foreign Commercial Service officer can carry the title of Minister-Counselor.

Section 203. Report on Export Policy

The Secretary of Commerce is responsible for the administration of all functions and authorities assigned to the Department of Commerce and for advising the President on Federal policy and programs affecting the industrial and commercial segments of the national economy. Among the responsibilities of the Commerce Department is to promote world trade and to strengthen the international trade and investment position of the United States. That Department is charged to devise programs to strangthen domestic export competitiveness and to promote U.S. industry's increased participation in international markets. Its Foreign Commercial Service is to develop, market and manage services geared to the marketing information needs of the U.S. exporting and international business community.

These responsibilities of the Commerce Department to strengthen domestic export competitiveness and to promote U.S. exports assumes even greater importance in the post Cold War era of increased global economic competition. The Banking Committee agrees with the thoughts expressed by Deputy Secretary of State Lawrence Eagleburger in a cable recently sent to U.S. diplomatic posts throughout the world:

> We as a government and as a society are going to have to acknowledge that our economic health and our ability to trade competitively on the world market may be the single most important component of our national security as we move into the next century.

Prompted by the realization of the growing need for export competitiveness, and cognitive of the fact that the U.S. has been running massive trade deficits annually for the past ten years, the Committee has decided to raise the level of Administration and public awareness of the need to export by requiring the Secretary of Commerce to submit an annual export promotion study to the Committee in any year in which the United States fails to achieve a merchandise trade surplus.

The report, among other things, should analyze ways to increase exports through strengthened Federal export promotion efforts, and improved coordination of federal, state and private industry export promotion efforts and programs. It should focus on barriers to U.S. exports identified by the United States Trade Representative in its annual National Trade Estimate Report and set forth activities by which we plan to overcome such barriers. Each report should also include the Secretary's recommendations for improving American manufacturing and industrial competitiveness. The report should discuss ways to improve and increase the dissemination of information and assistance to U.S. firms, particularly small- and medium-sized ones, that export or can potentially export their products overseas.

In the first report submitted by the Secretary, the Secretary shall also develop and submit a 5-year export market development strategy including specific agency plans to address the issues identified in the basic report, along with benchmarks to be used by the Congress in assessing the performance of the agency in implementing the strategy. The Secretary shall also consider and report on the creation of a "one-stop-shop" by the Foreign Commercial Service that would make available information on all U.S. Government export services and be a focal point for better coordination of federal export activities with non-profit groups, trade associations, and state, local, and regional export assistance agencies. The Secretary of Commerce is to appear annually before the Banking committee to discuss the report required by this section if requested to do so by the Committee.

Section 204. Pilot Program

The Director General of the United States and Foreign Commercial Service, who is also an Assistant Secretary of Commerce, manages the delivery of information about U.S. export promotion programs and opportunities through 47 district offices and 21 branch offices located in the United States and 124 posts located in 64 countries throughout the world.

The U.S. and Foreign Commercial Service is the federal government's primary export promotion agency. The Small Business Administration also provides such services to small businesses that are interested in exporting their products. Only about ten percent of U.S. firms are currently exporting their products, and about 250 companies account for most U.S. exports. In the new age of global economic competition the United States must make a concerted effort to get more U.S. companies interested in exporting.

This Section directs the Director General of the U.S. and Foreign Commercial Service to work with the Administrator of the Small Business Administration to develop a pilot program for increasing cooperation between the two agencies in providing export assistance to small business. The Administrator of the Small Business Administration shall select six small business experts to be assigned by the Director General of the U.S. and Foreign Commercial Service to certain of the district and branch offices maintained by the U.S. and Foreign Commercial Service in the United States to help devise ways to get small business more interested and involved in exporting. The pilot program shall be for two years.

Section 205. Interest Subsidy Program

Section 205 amends provisions of the Export-Import Bank Act of 1945 that establish a pilot interest subsidy program. This program was authorized by the International Development and Finance Act of 1989 and was intended to permit the Bank to experiment with use of guarantees and direct interest subsidies as an alternative to Eximbank direct loans.

At a hearing held by the Subcommittee on International Finance and Monetary Policy on September 13, 1989, the Chairman of the Eximbank, John Macomber, testified in support of the usefulness of such a limited demonstration program. The Administration subsequently expressed no objection to the program and the President signed the authorization as well as a separate FY 1990 appropriations bill providing funds for it. Despite these actions, the Administration subsequently decided not to use the funds or authority provided to test the concept and declined to request funds for the second year of the pilot program in FY 1991.

In the FY 1990 dire emergency supplemental which became law in May, Congress reacted by directing the Bank to use all funds appropriated in FY 1990 for the interest subsidy program. Despite this directive, the program has yet to begin. This provision would reinforce the directive in the FY 1990 supplemental bill and instruct the Bank to use all funds appropriated to implement the program. It would also extend the program one additional year, through the expiration of the Bank charter in FY 1992, and provide a $35 million authorization for this purpose. The Committee intends that the Bank move expeditiously to implement the program and adequately test the concept so that it can be evaluated as an alternative to standard direct loans in the context of the next reauthorization of the charter.

Section 206. Financing Defense Articles and Services

This section would amend the Export-Import Bank Act of 1945 to require the Eximbank to establish a program to provide guarantees for the sale of defense articles and services to Japan or any NATO member country on terms and conditions which are fully competitive with the Government-sponsored terms and conditions available from the principal countries whose exporters compete with U.S. exporters in the sale of defense articles and services to Japan and NATO countries. This provision clarifies existing law by explicitly directing the Eximbank to use its guarantee authority to assist United States exporters of defense articles and services in pursuing commercially viable sales to Japan and to our NATO Alliance partners, while keeping intact the general prohibitions on the sale of these items to economically less developed countries as contained in Section 2(b)(6)(A) of the Export-Import Bank Act and Section 32 of the Arms Export Control Act.

The Eximbank as a matter of policy—versus statutory requirement—has refrained from financing sales of defense articles and services, regardless of the economic status of the country to which the sale was directed. That policy was based in part on a decision to concentrate the resources of the Eximbank on providing commercial export financing and not to divert limited staff resources to

develop financing packages for military sales. In addition, there was a concern that a significant exposure by the Eximbank in a country under a military sales program could reduce the Eximbank's ability to provide support under its regular commercial export financing programs owing to the concentration of Eximbank exposure to credit risk in that country.

Several considerations led the Committee to adopt this provision. First, last year as part of the FY 1990 Foreign Operations Appropriations Act, the Senate adopted a provision which made clear that the Senate did not intend the prohibition on Eximbank assistance for defense related exports to less developed countries to apply to NATO countries, which are developed countries and close allies. In a compromise adopted by House and Senate conferees, the final bill specifically authorized the Eximbank to utilize its guarantee program for sales to Greece and Turkey. Despite this provision, the Eximbank has not provided loan guarantees for any defense related exports. Therefore, the Committee felt that it was now appropriate to mandate a change in policy with respect to NATO countries and Japan.

Second, under current circumstances, considerable guarantee authority could be provided for military sales to NATO and Japan without reducing the availability of Eximbank resources for non-defense exports. In FY 1989, the Eximbank utilized only $5.6 billion of the $19 billion in guarantee authority that had been made available. Similarly, in the current fiscal year the Eximbank has utilized only $5 billion of the $10.1 billion in guarantee authority as of July, and clearly will not utilize all of the remaining authority in the last ten weeks of this fiscal year.

Third, European and Japanese governments heavily subsidize their defense industries, and provide concessional financing to their defense exporters. This has placed U.S. defense exporters at a competitive disadvantage in these markets and has cost U.S. sales and jobs. The U.S. foreign military sales program which does provide financing for defense sales, does so only for government-to-government sales, and has not been made generally available for sales to most European countries.

Fourth, substantial cuts in U.S. defense expenditures that will occur in this fiscal year and in fiscal years to follow threaten to place an enormous burden on the U.S. defense industry, and particularly upon those communities that are very dependent on these companies for jobs. Providing Eximbank guarantees for defense exports at this juncture could help cushion the adjustment of the U.S. defense cuts by allowing the industry to gear itself up to compete internationally and keep production lines operational.

The requirements of this section are limited only to the loan guarantee authority of the Eximbank and are subject to standards and requirements which the Export-Import Bank Act mandates for all of Eximbank's programs.

Section 207. Human Rights in Yugoslavia

This section requires the Secretary of State to submit a report to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives within three months of the date of

enactment explaining why Eximbank funding for exports to Yugoslavia has not been restricted or denied despite the human rights requirements of the Export-Import Bank Act and State Department findings of human rights abuses.

Under Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, the human rights record of a country is to be a factor when determining its eligibility for Eximbank funding. In recent reports the U.S. Department of State, Amnesty International and the Commission on Security and Cooperation in Europe (the Helsinki Commission) have all documented serious human rights abuses in that country, yet current Eximbank exposure in Yugoslavia totals $1.2 billion, making it the third largest recipient of Eximbank financing, and a major Eximbank transaction for Yugoslavia totalling $255 million was approved just last July.

In its Country Reports on Human Rights Practices for 1989, the State Department cites many human rights practices in Yugoslavia that violate internationally accepted human rights standards, including psychiatric abuse, infringement upon and abrogation of the rights of assembly and fair trial, freedom of speech and freedom of the press. It reports that these human rights violations are targeted against certain ethnic groups and regions, particularly against the ethnic Albanian population of the Province of Kosovo. According to Amnesty International's Report—1990, released on July 10, 1990, at least 4,500 people were detained for political reasons during 1989, the great majority of them ethnic Albanians. Of these, some 1,700 were prisoners of conscience, of whom about 1,000 were imprisoned for up to 60 days for taking part in non-violent protest strikes in Kosovo province in February. Political prisoners were often denied a fair trial and there were allegations that political detainees had been ill-treated during pre-trial detention. Recently, the Helsinki Commission noted that the persecution of minorities in Kosovo is one of the worst remaining human rights problems in Europe.

Despite the ongoing human rights abuses in Yugoslavia, the State Department has not once raised an objection to any Eximbank transaction to that country, in spite of its own documentation of those human rights violations. The Committee looks forward to receiving the Secretary's explanation of why it would not advance America's interest in ending human rights violations in Yugoslavia to deny, pursuant to Section 2(b)(1)(B) of the Eximbank charter, that country's eligibility for Eximbank funding.

Section 208. Increase of Membership of Advisory Committee

An Advisory Committee is established under Section 3(d)(1)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(A)) to advise the Bank on its programs, and to submit comments to Congress regarding the extent to which the Bank is providing competitive financing for U.S. exports. Section 208 increases the number of Advisory Committee members from 12 to 15.

Section 209. Technical Corrections Relating to the International Development and Finance Act of 1989

Section 209(a) repeals language in the Bank charter, added by the International Development and Finance Act of 1989, that gave

the Bank authority to issue regulations authorizing reimbursement for travel and subsistence expenses incurred by a director, officer, or employee of the Bank. The Ethics Reform Act of 1989 created government wide rules on these matters and renders the language of section (c) unnecessary.

Section 209(b) repeals redundant authorizing language for the tied aid credit warchest that was inadvertently added to the charter by the International Development and Finance Act of 1989.

TITLE III—EXPORT SANCTIONS ON IRAQ

OVERVIEW

During the Committee markup to the Export Administration Act Amendments of 1990, Senator Kassebaum offered an amendment to impose sanctions against Iraq. After some discussion of jurisdictional questions raised by the amendment, the amendment was unanimously adopted by voice vote.

The amendment contains five sections: Section 301 consists of Congressional findings; Section 302 imposes sanctions against Iraq; Section 303 contains a date certain for purposes of contract sanctity; Section 304 provides Presidential waiver authority; and, Section 305 calls for the President to seek multilateral cooperation with respect to Iraq sanctions.

Section 301. Findings

In this section, Congress finds that the Iraqi government has violated human rights and engaged in the suppression of basic political freedoms in violation of its commitments and obligations under international law; the Iraqi government has blatantly violated international law by initiating the use of chemical weapons both against its own citizens and against Iran; there is persuasive evidence that Iraq is developing biolgical and nuclear weapons and is aggressively pursuing those technologies in violation of export controls; and there is evidence that Iraq has attempted to smuggle triggering devices used in nuclear warheads whose manufacture would violate the Treaty on Non-Proliferation of Nuclear Weapons, to which Iraq is a party.

Section 302. Imposition of Sanctions Against Iraq

Subsections (a) and (b) of this section ban government and commercial sales of items contained on the United States Munitions List. Subsection (c) prohibits export of those goods or technologies which are controlled for national security purposes under the Export Administration Act. Subsection (d) denies Iraq access to Export-Import Bank credit or credit guarantees. Subsection (e) denies Iraq access to credit or credit guarantees through the Commodity Credit Corporation. Subsection (f) denies all forms of assistance under the Foreign Assistance Act of 1961, other than assistance for medical supplies and other forms of humanitarian assistance, and under the Arms Export Control Act.

Section 303. Contract Sanctity

This section establishes that contracts for exports controlled pursuant to Section 6 of the EAA that were entered into before August 1, 1990 would not be affected by the provisions of this amendment.

Section 304. Waiver

This section allows exective waiver authority for any sanction imposed in Section 302. In order to use the waiver authority the President must make a written certification to Congress and make a determination, with appropriate justification, that it is in the national interest of the United States to waive the requirements of the specific subsection. The written certification must contain determinations that the government of Iraq has, through a pattern of conduct, demonstrated substantial improvement in its respect for recognized human rights; that the government of Iraq has demonstrated restraint in its own use of, and publicly forsworn first use of, chemical, biological, and nuclear weapons and their delivery systems; and that the government of Iraq has publicly recommitted itself to abide by the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisoning, or Other Gases, and of Bacteriological Methods of Warfare. The waiver authority will not take effect for at least 60 days after the certification is submitted.

Section 305. Multilateral Cooperation

This section calls on the President to seek multilateral cooperation to deny dangerous technologies to Iraq, and to induce Iraq to respect internationally recognized human rights.

Regulatory Impact Statement

Pursuant to Rule XXVI, paragraph 11(b), of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes it will not increase the net regulatory burdent imposed by the Government. Rather, Title I of the bill, which amends the Export Administration Act, will significantly streamline the export control process and thereby reduce the regulatory burdents imposed on United States exporters. Title II of the bill contains certain provisions designed to assist United States exporters and will not result in any net increase in the regulatory burden imposed by the Government. Title III of the bill also cause no net increase in the regulatory burden imposed by the Government of the United States.

Changes in Existing Law

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirement of Rule XXVI, paragraph 12, of the Standing Rules of the Senate, with respect to this legislation.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 1990.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Export Administration Act Amendments of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Export Administration Act Amendments of 1990.
3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs, July 17, 1990.
4. Bill purpose: This bill would amend a number of statutes dealing with export control and export promotion. It would authorize appropriations for the Export Administration of the Department of Commerce (DOC), and for the export promotion activities of the International Trade Administration for fiscal year 1991 and 1992. The bill would change the administration of export controls on sensitive products to East Bloc countries to reflect recent developments. In addition, a number of export promotion initiatives would be authorized, including a pilot program to assist small businesses and a number of reports to be prepared by DOC.

The bill also includes a number of provisions affecting the Export-Import Bank (Eximbank). Section 206 would require the Eximbank to implement an interest subsidy program that was previously authorized, would extend the program through fiscal year 1992, and would authorize the appropriation of $35 million in fiscal year 1992 for interest subsidy payments. Section 207 would require the Eximbank to establish a program to guarantee the financing of exports of military articles and services to the North Atlantic Treaty Organization (NATO) and Japan.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Export administration:					
Estimated authorization level	45	46			
Estimated outlays	40	46	5		
Export promotion:					
Estimated authorization level	165	172			
Estimated outlays	115	153	51	18	
Market Cooperator Program:					
Estimated authorization level	6	6			
Estimated outlays	4	6	2		

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Small Business Pilot Program:					
Estimated authorization level	(1)	(1)			
Estimated outlays	(1)	(1)			
Eximbank Interest Subsidy and Loan Guarantee Programs:					
Estimated authorization level		35			
Estimated outlays	−2	−1	1	2	3
Estimated loan guarantee authorization (Eximbank)	[1,850]	[675]	[325]	[350]	[375]
Total:					
Estimated authorization level	217	260			
Estimated outlays	158	205	59	20	3
Estimated loan guarantee authorization	[1,850]	[675]	[325]	[350]	[375]

[1] Less than $500,000

The costs of this bill fall within budget functions 150 and 370.

Basis of Estimate

This estimate assumes enactment of this legislation by September 30, 1990 and subsequent provision of the authorized amounts in appropriations acts. The bill authorizes such sums as may be necessary for the export control and promotion activities of DOC. We have assumed that the fiscal year 1992 appropriation for these programs would be the 1991 authorization adjusted for inflation. Outlay estimates are based on historical spending patterns for these programs.

The bill contains two sections that are estimated to increase guaranteed loan commitments for the Eximbank. The interest subsidy program required by Section 206 is estimated to increase commitments by $350 million per year in fiscal years 1991 and 1992 and financing exports of military equipment and services as mandated by section 207 is estimated to increase commitments by $1.5 billion in fiscal year 1991 and $300 million per year in real terms thereafter. New commitments are estimated to increase fee income in the next two years.

The estimate of guarantee commitments for the interest subsidy program assume an appropriation of $35 million per year for fiscal years 1991 and 1992 from new and existing authorizations. The estimate assumes the subsidy appropriation will be combined with an Eximbank financial guarantee to provide financing to borrowers with the same terms as an Eximbank direct loan and that each dollar appropriated will support $10 of guaranteed financing. The outlay estimate assumes the bank will make payments to the lender as interest is earned.

Requiring the Eximbank to establish a program to finance the export of military equipment and services to NATO and Japan is estimated to result in at least one large sale in fiscal year 1991. Other sales of defense equipment and services of $300 million are projected thereafter.

New credit authority for the Eximbank is limited to amounts provided in advance in appropriations acts. In the last five years appropriation acts have provided limits from $10.0 billion to $11.5 billion for new guarantee credit authority. During the same period, actual guarantee commitments have been $4.3 billion to $6.0 billion

below the limitation. Over the next five years, the CBO baseline estimate of new guarantee commitments for existing Eximbank programs remains below a projection of the credit limit by over $4.3 billion per year. New commitments estimated from enactment of this bill can be accommodated within projected loan limitations.

Other sections of the bill that increase the size of the Eximbank's Advisory Board and repeal redundant authorization language are estimated to have no significant budget impact.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marta Morgan and Joseph C. Whitehill.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATORS SARBANES, HEINZ, RIEGLE, AND WIRTH

We strongly support the "Export Administration Act Amendments of 1990", reported out of the Banking committee by a unanimous vote. We believe it is a carefully constructed bill that strikes a balance between the need of U.S. exporters to compete effectively in international markets and the genuine security requirements of the United States in controlling the sale of high technology commercial goods with military applicaions. We urge its speedy adoption by the Senate.

However, there is one provision of the bill added during the Committee markup of the legislation that causes us serious concern. That provision, Section 206, would require the Export-Import Bank to establish a program to provide guarantees for the sale by private industry of defense articles and services to Japan or any NATO member country. We oppose this provision for the following reasons.

First, Eximbank is the only U.S. agency that finances exports of U.S. commercial produts. In pursuit of its export mission, the Eximbank has generally not engaged in financing of military goods or services, a policy re-enforced by a statutory ban with respect to financing military exports to developing countries. The only exception to this policy, enacted as part of the 1988 drug bill, permitted financing of military equipment to such countries but only if specifically authorized by the President for the express purpose of combating the world drug trade.

We believe it would be a serious mistake to make such a fundamental shift in the mission of the Eximbank without careful thought and consideration beforehand by both the Congress and the Administration. No such preparation preceded the adoption of this provision by the Banking Committee. The Committee did not hold any hearings on the issue and in fact never considered the matter prior to the markup of the legislation. To make such a significant policy change without thorough consideration of all its implications is not a wise and prudent way to proceed.

This point was made forcefully in a July 17, 1990 letter to the Committee from John Macomber, the President and Chairman of the Eximbank, opposing this provision. In the letter, the full text of which is set out below, President Macomber stated that "Such an amendment would represent a fundamental reorientation of the focus of Eximbank's programs, and we believe it should not be adopted without a thorough analysis of major policy issues on the part of both the legislative and executive branches of the government."

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, DC, July 17, 1990.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs,
Dirksen Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: During your Committee's consideration of the mark-up of the Export Administration Act, it is my understanding that an amendment will be offered that will direct Eximbank to establish a program of guarantees to support the sale of defense articles and services to countries of the North Atlantic Treaty Organization (NATO) and Japan. Such an amendment would represent a fundamental reorientation of the focus of Eximbank's programs, and we believe it should not be adopted without a thorough analysis of major policy issues on the part of both the legislative and executive branches of the government. We note that to date no hearings have been held on the subject.

For more than twenty years, Eximbank has been prohibited as a matter of law from financing military sales to the developing countries, and as a matter of policy has refrained from providing such support for developed countries. As a result, the Bank has been able to concentrate its resources on providing commercial export financing. In the future, the demand for Eximbank support of this kind is likely to increase dramatically. With the virtual disintegration of communism in Eastern Europe and the return to free market economies in Latin America and elsewhere, significant opportunities are being offered to U.S. suppliers, which they will only be able to utilize with the support provided under Eximbank's programs. Thus, while Eximbank may not have used all of the guarantee authority available to it in the past, those resources are not unlimited and could be utilized if projected demand materializes. Furthermore, credit reform legislation, if enacted, could eliminate the current surplus in guarantee authority.

The Bank operates with an extremely small staff, and any requirement to establish a program to finance military sales could divert personnel from commercial export financing. In addition, for all of the transactions which the Bank is asked to support, reasonable assurance of repayment must be found. One factor affecting this credit judgment standard is Eximbank's overall exposure in a country. Thus, a significant exposure under a military sales program could reduce our ability to provide support under our regular commercial export financing programs.

for these reasons, we urge that the proposed amendment not be accepted. I would welcome the opportunity to discuss this matter with you in greater detail at your convenience.

Sincerely,

JOHN D. MACOMBER,
President and Chairman,
Export-Import Bank of the United States.

Second, we believe the consequences of this policy change for the Eximbank and U.S. exporters may turn out to be very substantial. In budgetary terms, the Eximbank has been falling behind demand for its services from commercial exporters. Its direct loan program

is oversubscribed and its administrative resources stretched very thin, Requiring the Eximbank to establish a specialized military sales program involving difficult security and foreign policy judgments is bound to divert administrative resources and attention from its mission of assisting commercial exports.

While the Bank has had excess guarantee authority in recent years, the Congress has authorized and appropriated funds to utilize more of the guarantees in the future in combination with the tied aid credit warchest and a new pilot interest subsidy program. Furthermore, there is good reason to think that the demand for Eximbank's guarantee resources will expand in the future. As President Macomber points out in his letter, "With the virtual disintegration of communism in Eastern Europe and the return to free market economies in Latin America and elsewhere, significant opportunities are being offered to U.S. suppliers, which they will only be able to utilize with the support provided under Eximbank's programs. Thus, while Eximbank may not have used all of the guarantee authority available to it in the past, those resources are not unlimited and could be utilized if projected demand materializes."

Third, once such a program as this is established to support military exports by private industry to NATO countries and Japan, the pressures to make the program available to other industrial countries that are friendly to the United States will be inevitable and very difficult to resist. It will be an open invitation for country after country and for those who want to sell such countries United States weaponry to seek eligibility. The risk exists that in not too long a period of time commercial exporters may be squeezed out of access to limited Eximbank resources because such resources are being used for military purposes.

PAUL SARBANES.
JOHN HEINZ.
DONALD W. RIEGLE, Jr.
TIMOTHY E. WIRTH.

APPENDIXES

APPENDIX I

THE SECRETARY OF COMMERCE,
Washington, DC, July 13, 1990.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This expresses the views of the Administration on the July 12 Banking Committee Print regarding renewal of the Export Administration Act (EAA). We appreciate the Senate Banking Committee staff working with the Administration in the development of the Committee Print.

The Administration supports the Committee Print for the EAA reauthorization. It embodies the shared objectives and goals of the Congress and the Administration to achieve an effective export control system without diminishing the national security interests of the United States. These shared objectives are especially relevant because of the recent dramatic events in the Soviet Union and the emerging democracies of Central Europe.

We particularly support those sections of the draft that reflect the achievement made by the Administration during the recent High Level Meeting of the Coordinating Committee, the plans to proceed with further developments in the "Core List" exercise, preferential treatment of the emerging democracies of Central Europe, and the license-free zone for COCOM.

We continue to be concerned, however, about provisions in the Committee Print that impinge upon the President's discretion to negotiate with our Allies. The Administration also objects to provisions that unduly limit the prerogatives of the President in organizing and controlling the Executive Branch, in particular Section 111 (and the corresponding earmark in Section 117(b)(1)). In addition, the Administration opposes the extension of an Eximbank interest equalization program. Finally, in regard to Section 116 (Policy Toward the People's Republic of China), we note that the Soviet Union, Eastern Europe, and China represent different strategic threats and that the United States may, in the course of COCOM negotiations, have to accord different treatment to each in order to protect vital security interests.

We remain available to work with the Committee in developing an effective export control bill. We have been advised by the Office

of Management and Budget that there is no objection to the submission of this report to the Congress.

Sincerely,

ROBERT A. MOSBACHER.

APPENDIX II

SARBANES-GARN PACKAGE OF AMENDMENTS

AS AGREED BY COMMITTEE MEMBERS AND SUPPORTED BY THE ADMINISTRATION

Requires the Commerce Department to issue regulations defining "dual use goods and technology" no later than March 31, 1991.

States that the United States should propose to CoCom that computer network software and related equipment be given the same licensing treatment as the computers to which they are connected.

States that the United States should renegotiate multilateral arrangements to restrict missile technology and to increase the number of countries participating in the Missile Technology Control Regime.

Provides for forfeiture of goods or technology that have been lawfully seized by Commerce Department special enforcement agents.

Revises the indexing provisions of Section 5.

Revises the Control List review requirements of Section 5 to update the process and link it to the revised indexing provisions.

Restricts the People's Republic of China's access to dual use goods and technology related to missile and nuclear weapons proliferation.

Allows the Administration until March 31, 1991 to eliminate the overlap between the Control List and the Munitions List.

Requires the Commerce Department to develop a new measurement for evaluating the performance capabilities of controlled computers.

Requires the Commerce Secretary, in consultation with the Secretary of State, to establish, as part of the control list, a list of dual use goods and technology that would provide a direct and immediate impact on the development of missile delivery systems.

Establishes 15 day deadline for acting on licenses for exports subject to national discretion procedures and 30 day deadline for favorable consideration procedures.

Provides for certain technical amendments to the Committee Print.

APPENDIX III

U.S. DEPARTMENT OF STATE,
Washington, DC.

COCOM HIGH LEVEL MEETING: FACT SHEETS

At the June 6–7 COCOM High Level Meeting (HLM), all COCOM members reaffirmed their belief that COCOM remains an essential element of Western security. At the same time, they agreed to a comprehensive approach to respond to the recent historic changes in the strategic environment. The decisions taken encompass all the essential elements of President Bush's proposal to modernize COCOM announced on May 2. The following are the major components.

I. CORE LIST

COCOM members agreed to completely overhaul the existing Industrial List (which forms the basis for the U.S. Commodity Control List) by the end of 1990. This new "Core List" will be written from scratch with a view toward further reduction of the scope of the controls.

The Core List will be written with reference to the following eight categories of strategically critical items:

(1) Electronics design, development and production;
(2) Advanced materials and materials processing;
(3) Telecommunications;
(4) Sensors and sensor systems and lasers;
(5) Navigation and avionics systems;
(6) Marine technology;
(7) Computers;
(8) Propulsion systems.

Strategic criticality will be the central criterion for formulating the Core List, but we will ensure effectiveness and enforceability of the controls by also considering factors such as the inherent controllability of an item and availability of an item from non-COCOM member sources.

—In addition, the Core List will be drafted in a "positive" format (all items controlled will be explicitly referenced) thereby making the controls easier to interpret and enforce.

Members will submit core list proposals by September 15. The Committee will monitor progress of the work necessary to meet the objective of completion by mid-December.

II. PRIORITY SECTORS

The COCOM-agreed priority sectors of computers, telecommunications and machine tools account for the bulk of exports of controlled goods and technology. The changes negotiated in each area will take effect July 1, 1990.

A. Computers

The agreement concluded at the HLM on computers decontrols virtually all personal computers and associated peripherals, as well as some small mainframes. In addition, access to much higher levels of computer equipment and technology is afforded through liberalization of parameters for national discretion (no prior COCOM review necessary) and favorable consideration (presumption of approval in COCOM) treatment. The following are the major elements of the agreement.

Decontrol of all computers with Processing Data Rates (PDR) up to 275 Mbps. This decontrol covers computers based on the Intel 80386 microprocessor operating at a 33 megahertz clock rate and the Motorola 68030 operating at a 40 megahertz clock rate.

—In conjunction with the PDR liberalization, the decontrol parameters for complete systems have been liberalized to allow main memory of 32 MBytes, a disk storage of 2 GBytes, and a maximum disk transfer rate of 20.6 Mbps.

—Examples of machines decontrolled are the IBM PS–2 series and Compaq Deskpro 386.

—Minicomputers affected by the decontrol include the DEC PDP 11 series, Microvax, and 8500 series that are used for general purpose computation needs in engineering facilities and laboratories.

Decontrol of many peripherals, for example:

—Hard disk drives with a capacity of 165 MBytes with a transfer rate of no more than 10.3 Mbps.

—6250 bpi tape drives with a maximum transfer rate of 10 Mbps. (Streamer tape drives with a transfer rate of 16 Mbps are all decontrolled.

—Standard 20 Mbps office LKocal Area Networks (LANs), such as Ethernet or Token Ring LANs

—Standard computer displays with a resolution of 1280 $\times$ 1024 and up to 256 shades of gray or color.

—Array Transform Processors (ATPs) with an equivalent multiply rate of 6.5 Mops.

Favorable consideration licensing for the assembly of decontrolled computers and peripherals, such as those mentioned above. This is an important liberalization for the cash-short economies of the proscribed countries.

National discretion licensing for computers with a PDR up to 550 Mbps. This affects large minicomputers and mid-level mainframes that are used for scientific data processing, departmental processing, and banking applications. Export of computers with a PDR between 400 and 550 requires a 30 day prior notification to COCOM.

—Other control parameters have been selected to allow for the export of standard configurations of computer systems whose PDR falls within this range, e.g. main memory of 64 MBytes,

disk storage of 6 GBytes, and maximum disk transfer rate of 25 Mbps.

—Examples of machines affected include DEC 8800 (certain modesl), IBM 3083, 4083, and 3081 (certain models), and the CDC Cyber 180–850.

Favorable Consideration will apply to computers with a PDR up to 1000 Mbps. This will provide the proscribed destinations more ready access to large mainframes used for processing seismic data or in large data processing facilities.

—Other parameters have been relaxed as well, e.g. main memory of 128 MBytes; disk storage of 12 GBytes and a maximum disk transfer rate of 25 Mbps.

—Examples of machines affected included the IBM 3081, DEC 6430, and CDC Cyber 180–860.

National discretion licensing for computers that would normally fall under the favorable consideration procedures (e.g. PDR to 1000) if they are to be used for nuclear safety applications such as training simulators and monitoring systems.

B. Telecommunications

The agreements reached in telecommunications affect the controls in CCLs 1353, 1516, 1519, 1520, 1537, 1531, and 1567. The following are the major elements of the agreement.

—Decontrol of satellite ground stations for television, weather and civil communication.

—Decontrol of small digital PABX switches. Larger digital switches can be exported at national discretion (no prior COCOM review required).

—National discretion treatment for packet (data) switches to the China Green Line level, but without the restriction on allowable number of nodes.

—Favorable consideration (presumption of approval in COCOM) for export of technology for production of digital circuit (voice) switches which are either decontrolled or can be exported at national discretion.

—Liberalization of land mobile radio communications equipment, including single-switch analog cellular phone systems.

Special Procedure for Czechoslovakia, Hungary and Poland in Telecommunications

Provided certain licensing conditions are met with each transaction (e.g. government backed end-use assurance), COCOM members may license the following at national discretion. These changes give Czechoslovakia, Poland and Hungary access to significantly more modern telecommunications equipment than that given to the PRC.

—Fiber optic and microwave transmission equipment with a data rate up to 156 megabits per second. This permits export of equipment operating at this data rate that conforms to the new SONET/SDH standards.

—For microwave transmission equipment, modulation levels can be up to the equivalent of 64 QAM.

—Full end-to-end digital circuit switching, common channel signalling (CCITT signalling No. 7) and ISDN. This allows these

countries to incorporate the latest switching features for long distance and local telephone service.

These countries are also eligible for favorable consideration licensing of technology to produce the equipment listed above that is available to them at national discretion (with some limiting conditions).

C. Machine Tools

The agreement in this sector affects controls covered by 1091, 1093 (which was incorporated in a liberalized manner into 1091), 1532, 1399, and 1075 (which has been deleted). Machines necessary for modern civilian manufacturing have been made available to all proscribed destinations. However, machine tools of the sophistication involved in the Toshiba-Kongsberg diversion remain controlled. In addition, the controls on highly accurate lathes with nuclear and SDI applications have been more clearly defined to ensure that they remain under control. The main features of the machine tool agreement are as follows.

—Decontrol of the new generation of 32 bit numerical controllers; this is consistent with changes in the embargo on personal computers.

—Decontrol of industry standard machine tools with positioning accuracies to the ±2 micron level for grinding machines; ±3 or 4 microns for milling machines and ±3 microns for turning machines.

These two major changes will permit the export, with no prior USG approval, of appoximately 75 percent of all advanced machine tools produced in the U.S. Under existing controls, 80–90 percent of these machine tools are controlled.

In addition to relaxing controls on grinding, milling and turning machines, COCOM members agreed to decontrol spin- and flow-forming equipment and bring controls on dimensional inspection systems under a single, rationalized and liberalized new list item, CCL 1000 (this item incorporates 1532 and some elements of 1091).

—Control parameters for dimensional inspection systems have been adjusted to reflect the liberalization of positioning accuracy controls on machine tools.

—Manual measuring machines with "measurement uncertainty" exceeding (0.25 + L/1000) micron will be decontrolled.

—Two-axis computer controlled and numerically controlled systems with a one dimensional length "measurement uncertainty" exceeding (1.5 + L/1000) microns and a probe accuracy of 0.2 microns will be free from embargo.

III. DELETION OF ONE-THIRD OF INDUSTRIAL LIST ENTRIES

Effective July 1, members agreed to delete the following 30 entire Industrial List entries. They will seek to eliminate an additional eight by August 15, bringing the total to one-third of the current control list. Some of the items being deleted present proliferation concerns; deletion from the COCOM control list does not imply decontrol for proliferation purposes. However, the proliferation controls do not necessarily apply to all countries.

IL 1075—Spin-forming and flow-forming machines.

IL 1129—Vacuum pump systems.
IL 1203—Electric furnaces, specially designed components and controls, and "specially designed software".
IL 1206—Electric arc devices.
IL 1305—Metal rolling mills, specially designed components, accessories and controls and "specially designed software".
IL 1354—Equipment to manufacture or test printed circuit boards.
IL 1356—Equipment for the continuous coating of polyester-base magnetic tape embargoed by IL 1572.
IL 1359—Specially designed tooling and fixtures for the manufacture of fibre-optic connectors and couplers.
IL 1360—Special equipment for processing embargoed quartz crystals.
IL 1365—Equipment specially designed for in-service monitoring of acoustic emissions in airborne or underwater vehicles.
IL 1372—Technology for industrial gas turbine engines.
IL 1425—Floating docks, "software" and technology.
IL 1514—Pulse modulators.
IL 1518—Telemetering and telecontrol equipment.
IL 1521—Solid state amplifiers.
IL 1541—Cathode tubes and switches.
IL 1542—Cold cathode tubes and switches.
IL 1544—Semiconductor diodes and dice and wafers.
IL 1545—Transistors and dice and wafers.
IL 1547—Thyristors and dice and wafers.
IL 1559—Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction, and accessories.
IL 1570—Thermoelectric materials and devices.
IL 1584—Oscilloscopes.
IL 1587—Quartz crystals and assemblies.
IL 1588—Materials composed of crystals having special structures.
IL 1602—Pyrolitic deposition technology and specially designed components.
IL 1635—Steel alloys in crude or semi-fabricated form, containing a specified combination of elements.
IL 1734—Low density rigid, carbon-bonded, fibrous or non-fibrous carbon thermal insulating materials.
IL 1749—Polycarbonate sheet.
IL 1760—Tantalates and niobates, except fluorotantalates.

IV. LIBERALIZATION TO THE CHINA GREEN LINE

In addition to deleting 30 entries from the Industrial List, COCOM members decided to streamline the List by liberalizing additional entries approximately to the level set by the "China Green Line." The Green Line, established in 1985, was made up of special notes in many entries on the Industrial List that afforded preferential access to goods and technologies for the Peoples Republic of China.

Apart from the entries covered by the three priority sectors (computers, telecommunications, and machine tools), there are 22 Industrial List entries containing 23 China Notes. Of these, eight

entries are among the 30 to be deleted outright from the List. COCOM member governments agreed in Paris that seven of the remaining items would be decontrolled to or nearly to the Green Line immediately, with the change to go into effect on July 1, 1990.

IL 1358—Equipment specially designed to manufacture or test electronic devices and assemblies employing certain crystals or thin films, embargoed by IL 1588, or magnetic recording media described in IL 1572, and specially designed components and related software.

IL 1391—"Robots", "robot" controllers and "robot" "end-effectors," and specially designed components and related software. (*Note*: controls on certain vision systems to be retained at a level short of the "Green Line.")

IL 1529—Electronic equipment for testing, measuring, or for microprocessor/microcomputer development, and related software.

IL 1564—"Assemblies" of electronic components, "modules", printed circuit boards with mounted components, "substrates" and integrated circuits. (*Note*: actual liberalization to be determined in List Review negotiations scheduled for June 18–27.)

IL 1568—Analogue-to-digital and digital-to-analogue converters, position encoders and transducers, and specially designed components and test equipment.

IL 1585—Cameras, components, and photographic media. (*Note*: current controls to be retained on certain high-speed mechanical framing cameras.)

IL 1763—"Fibrous and filamentary materials."

COCOM also decided that controls should be relaxed on the remaining seven Industrial List items which contain China notes to levels approximating the China Green Line level. These changes will require additional preparation and discussion in the regular Committee and are to go into effect by August 15, 1990. The items covered by this part of the decision are:

IL 1335—Equipment for the manufacture or testing of electronic components and materials and specially designed components, accessories and related software (this item contains two China notes).

IL 1460—Aircraft and helicopters, including tilt-wing and tilt-rotor aircraft, aeroengines and aircraft and helicopter equipment and related technology.

IL 1510—Marine or terrestrial acoustic or ultrasonic systems or equipment (sonar).

IL 1548—Photosensitive components, including linear and focal-plane arrays, and dice and wafers therefor.

IL 1555—Electron tubes.

IL 1702—Hydraulic fluids containing as the principal ingredient petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons.

IL 1757—Compounds and materials (silicon and other materials used to manufacture integrated circuits).

V. SPECIAL ARRANGEMENT FOR THE GDR

In view of the rapid movement toward German unification and the disappearance of a customs border between the two Germanys, COCOM members approved a FRG proposal for a special, interim

export control arrangement for the GDR. The GDR interim arrangement will take effect July 1, 1990 and last until full unification. At that time, the unified Germany will become a COCOM member. The following are the key elements of the GDR interim export control arrangement:

Full General Exceptions treatment will apply to only a few strategically critical items (see annex 1, attached, "GDR interim list").

In the case of exports to the GDR of COCOM controlled goods and technologies not on the Interim List, exporters will only be required to obtain end-use assurances from the GDR, notify the GDR importers that the export is a COCOM controlled good of technology, and comply with reporting requirements.

—Prior to the export of any COCOM controlled good or technology, regardless of whether it appears on the GDR interim list, companies in all 17 COCOM countries must obtain an end-use certificates from the GDR stating that the good or technology acquired will be used solely for civil purposes.

—Exporters will be required to submit the end-use certificates (or equivalent information) to their national governments in all cases. The reporting must occur prior to the export in the case of goods on the GDR interim list, and expeditiously after the export in the case of goods not on the list.

—GDR companies will not re-export goods and technologies subject to export controls of COCOM countries without the prior approval of the exporting country. The GDR will continue to export without COCOM controls its indigenous production and technologies.

—However, indigenous goods and technologies upgraded to COCOM control levels through the use of controlled goods and technologies from a COCOM country will require re-export authorization.

Finally, the FRG and GDR have agreed to work together closely to implement a viable and effective export control system in the GDR. They will create parallel legal and export control systems. The GDR safeguards program will include protections against unauthorized acquisiton of COCOM controlled items, and provisons for improved enforcement and licensing.

VI. SPECIAL PROCEDURE FOR COUNTRIES REPRESENTING A LESSER STRATEGIC THREAT

In addition to the immediately applicable special treatment for Czechoslovakia, Hungary and Poland in telecommunications, COCOM members agreed to a wide-ranging special procedure for proscribed countries that represent a lesser strategic threat and that adopt appropriate safeguard systems to protect controlled technology imports. The decision that these conditions have been met will be made collectively by COCOM members.

For qualifying countries, exports of all but a few Industrial List items currently controlled at the General Exceptions level will be considered under the Favorable Consideration procedure (presumption of approval) in COCOM. The only items that will remain subject to the more stringent General Exceptions procedure will be those items listed in Part C of the GDR interim list, plus 1091 (ma-

chine tools) and 1519 (telecommunications transmission equipment).

No country has yet been deemed eligible for this wide-ranging special procedure. However, the U.S. is holding discussions with officials of Czechoslovakia, Hungary and Poland on how to implement the measures necessary to ensure that controlled goods and technology are devoted exclusively to the civilian purposes for which they are authorized. An important prerequisite for an adequate safeguard system is the termination of intelligence cooperation with other proscribed countries that is devoted to the illegal acquisition and diversion of controlled technology.

—Czechoslovakia, Hungary and Poland have all indicated a strong willingness to adopt the control measures that COCOM has agreed are necessary. If they continue to follow their present path of reform, the U.S. considers that these countries are future candidates for removal from the list of proscribed destinations.

In light of the evolving strategic situation, COCOM members will consider the possibility of upgrading the degree of liberalization afforded to qualifying countries in January.

VII. ENFORCEMENT

In conjunction with the significant liberalization of controls that has been agreed, COCOM members reaffirmed the importance of effective enforcement of the controls. They agreed that members would take all necessary steps toward the objective of ensuring that their national control systems are fully in compliance with the COCOM-agreed standards for effective and equal enforcement by April 30, 1991.

VIII. MISCELLANEOUS

Effective June 8, the guidelines for de minimis and temporary exports were made consistent with those currently applicable only to the PRC.

For de minimis, this means that all dual-use exports valued at less than $5,000 (except ILs 1548 and 1555) can be exported without COCOM review. Exports valued at between $5,000 and $50,000 can be licensed at national discretion as long as the Committee is notified three weeks prior to approval. (The limits were formerly $2,000 and $20,000.)

For temporary exports, this means that members may approve, at their discretion, virtually any item for temporary export to the proscribed countries as long as it remains under control and ownership of the exporter or other COCOM national.

ANNEX 1

GDR INTERIM LIST

The following items remain subject to COCOM General Exceptions Procedures.

A. Munitions List except:

Note 1 (AEN) to ML 01
Note 4 (AEN) to ML 18

B. Atomic Energy List except
Note 2 (AEN) to AEL B.3
C. Industrial List, limited to the following entries:
(1) Electronic andprecision instruments:
IL I565 (a), (b), (f), (g);
(c) and (d) when combined with specially designed software for modeling simulation on design integration for complete rocket systems and unmanned air vehicle systems.
(h) with a PDR greater than 2000 MBits/Sec.
IL 1501 (b), (2) to (5), (c)
Radar Equipment, other than radar for purposes such as air traffic control.
IL 1485
IL 1510 above PRC AEN
(2) High performance gas turbines:
IL 1361 (a) to (d), (f), (g)
(3) Submarine technology:
IL 1417 (a) to (b), (d)
IL 1418
(4) Laser technology:
IL 1522 above PRC AEN
(5) Stealth related technology and space flight:
IL 1357 (a) and (b)
IL 1465
IL 1763 above PRC AEN (a), (b), (c), and (e)
IL 1763 (d), when specially designed for military, stealth or space applications
(6) Equipment for the manufacture or testing of electronic components and materials:
IL 1355 above PRC AEN, Notes (2) (d) (5), (2) (e), (2) (j), (3) (g), (3) (h)
(7) Deposition processing:
IL 1388
IL 1369
(8) Cryptographic equipment:
IL 1527
Cryptographic equipment and specially designed components therefore, designed to ensure secrecy of communications (such as telegraphy, telephony, facsimile, video and data communications) or of stored information; and "software" controlling or computers performing the functions of such cryptographic equipment, except:
automatic bank teller equipment, defined as devices which provide bank account information, dispense currency, process consumer transactions or act as point-of-sale terminals;
equipment whose only cryptographic function is to authenticate data by calculation of a message authentication code (MAC);
equipment whose only cryptographic function is to protect passwords or personal identification numbers (PIN) to prevent unauthorized access to computing facilities; and

television descramblers using analog scrambling techniques for th epurpose of entertaining.

(9) Cameras and components:

IL 1585 notes (b), (c), (d), (e)

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